

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 120024-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 30th day of September 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On March 11, 2011, XXXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner immediately notified Blue Care Network of Michigan (BCN) of the request and asked for the information it used to make its adverse determination. The Commissioner received BCN's response on March 16, 2011. On March 18, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request for external review. BCN provided additional information on March 25, 2011.

The issue in this external review can be decided by an analysis of the certificate and its rider. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

With its *Healthy Living Rider* (the rider), BCN offers a program "designed to promote or maintain good health and/or prevent disease or the progression of disease for Members in the Program." Under the rider, members who adopt or maintain healthier behaviors receive

“enhanced” benefits (lower copayments, coinsurance, and deductibles). Members who do not maintain or wish to adopt healthier behaviors receive “standard” benefits (higher copayments, coinsurance, and deductibles).

On January 1, 2010, the Petitioner and her spouse were conditionally enrolled in the *Healthy Living* program with enhanced benefits. As a smoker, the Petitioner was required to actively participate in a free “Quit the Nic” (QTN) program. QTN is a telephone-based program designed to help members end all forms of tobacco use.

BCN eventually determined that the Petitioner had not met the requirements of the QTN program and placed her in the standard benefits plan effective October 23, 2010.

The Petitioner appealed BCN’s decision to terminate her from the enhanced benefits plan. At the conclusion of the internal grievance process, BCN issued its final adverse determination letter dated February 14, 2011. The Petitioner seeks a review of that adverse determination from the Commissioner.

III. ISSUE

Did BCN properly deny the Petitioner continued participation in the enhanced benefits plan?

IV. ANALYSIS

Petitioner’s Argument

The Petitioner states that she works two jobs and knew it would be difficult for her to be reached by telephone to comply with the QTN requirements. Because of her work schedule, she states she asked the QTN representatives to contact her after 5:00 p.m. on Mondays and Fridays or any time on Saturdays.

She states that the QTN representatives did not call her during those specified times and then terminated her for failing to comply with the program’s requirements.

The Petitioner wants BCN to restore her to the enhanced benefits plan from October 23, 2010 through March 31, 2011.¹

¹ Apparently the Petitioner reapplied and was restored to the enhanced benefits plan effective April 1, 2011.

Respondent's Argument

In its final adverse determination BCN wrote:

. . . The Panel has maintained the denial for reinstatement to the enhanced benefit level of the HBL program based on your non compliance with the Quit the Nic (QTN) program. Your contract will remain in the standard benefit level. You may re-apply for our enhanced benefit at your next open enrollment.

Commissioner's Review

Health maintenance organizations like BCN are permitted to offer wellness programs like *Healthy Living* that provide for reduced copayments, coinsurance, and deductibles when members meet certain conditions. See MCL 500.3426. In addition to the requirements specified in the rider, BCN requires *Healthy Living* members who are smokers to “actively participate” in the QTN program. According to a QTN brochure, members must enroll in the QTN program within 120 days from the start of the plan year, visit their doctor every six months, and stay in the program until they quit smoking.

In a March 16, 2011, letter submitted for this external review, BCN explained its decision to place the Petitioner in the standard benefits plan:

Based on the information, it was determined that the [Petitioner] with [sic] non compliance with the Quit the Nic (QTN) program. The [Petitioner] enrolled on April 29, 2010 and was compliance [sic] in her enrollment, which needed to be completed by April 30, 2010. Based on the following dates, the [Petitioner] did not successfully complete the program. She completed encounters on May 7, May 26, June 4, June 21, and July 10, July 24, and August 11, 2010. She had unsuccessful encounters on the following dates of May 21, July 8, August 7, August 9, September 28, and October 7, 2010. The [Petitioner] was dropped from the program for non-compliance on October 23, 2010. An inability to reach the member letter was sent to her on October 7, 2010 by the QTN program and there is not any record of the [Petitioner] responding to this letter. The [Petitioner] must finish the program and successfully quit smoking to be compliant. Therefore, the [Petitioner] must remain in the standard benefit until they re-apply for the enhanced benefit at then . . . next open enrollment.

After failing to contact the Petitioner for telephone encounters on September 28 and October 7, 2010, BCN states it sent her an “inability to reach the member letter” dated October 7, 2010. BCN states the Petitioner did not respond to that letter and she was dropped from both the QTN program and the enhanced benefits plan on October 23, 2010.

Based on a review of the information submitted for this external review, the QTN program apparently contacts participants by telephone every few days. The Petitioner was contacted by telephone (or BCN indicates it attempted to contact her) 13 times from May 7 to October 7, 2010. There is nothing in the record that explains what transpires during these telephone calls or how often they are made.

Furthermore, there is nothing in the record that explains what constitutes compliance (e.g., how many or what percentage of the telephone encounters must be successfully completed). The term “actively participate” is not defined. There are no objective standards to review to determine if in fact the Petitioner did or did not comply with the program. BCN simply asserts that the Petitioner was not compliant. Therefore, in the absence of any standards, the Commissioner concludes and finds that BCN failed to show that the Petitioner was not compliant with the QTN requirements.

According to information submitted by BCN, it completed seven telephone encounters with the Petitioner and had unsuccessful encounters six times. However, the Petitioner states she asked to be contacted after 5:00 p.m. on Mondays and Fridays or anytime on Saturdays because of her work schedule.² Of the six dates on which BCN states there was an unsuccessful telephone encounter, one of the dates was a Tuesday (September 28) and two were Thursdays (July 8 and October 7), days on which the Petitioner asked QTN not to call.

The Petitioner acknowledged receiving BCN’s October 7, 2010, “inability to reach the member letter” that told her that she would be placed in the standard benefits plan if she did not contact the QTN program by October 22, 2010. She states she called the program on October 15, 2010, and left a voice mail message.³

Considering the foregoing, the Commissioner concludes that BCN arbitrarily and improperly removed the Petitioner from the *Healthy Living* enhanced benefits plan.

V. ORDER

The Commissioner reverses Blue Care Network of Michigan’s February 14, 2011, final adverse determination. Within 60 days of the date of this Order BCN shall restore the Petitioner to the enhanced benefits plan for the period from October 23, 2010, to March 31, 2011, and shall, within seven (7) days of providing coverage, furnish the Commissioner with proof that it has implemented this Order.

² There is nothing from BCN to indicate that it did not receive this request or did not agree to honor it.

³ The Petitioner’s cellular telephone records indicate that she placed a three-minute call to the QTN program (800-811-1764) on October 15, 2010.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.